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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/033,003
Filing Date: December 28, 2001
Appellant(s): CAMBLE ET AL.

R. Ross Viguet
For Appellant

EXAMINER'S ANSWER

This Examiner's Answer is in response to the appeal brief filed March 10, 2006 appealing from the Office action mailed August 9, 2005.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,636,958	Abboud, et al.	10-2003
6,742,034	Schubert, et al.	5-2004
6,606,664	Darago, et al.	8-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8, 12, 13-15, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abboud (U.S. 6,636,958) in view of Schubert (U.S. 6,742,034).

As per claim 1, Abboud teaches a method for providing data storage capacity on demand comprising: partitioning at least a portion of a set of active data media storage slot elements and active data transfer elements of said data library, exclusive of disabled elements, into partitions for use by said end users; and redefining said sets in response to changes in storage capacity rights of said end users (column 6, lines 37-44; column 9, lines 46-64). Abboud does not specifically teach the disabling of slot and data transfer elements, thus disallowing user access to these elements. Schubert teaches the disabling of these elements, which effectively disallows access to these elements (column 8, lines 1-15; column 4, lines 42-57). It would have been obvious to one of ordinary skill in the art at the time of the invention to include the disabling of certain slot elements, which would in turn, disallow access to certain elements, as taught by Schubert in the system of Abboud. The motivation for doing so lies in the fact that if users need extra space, an efficient method to provision this would constitute the disabling of certain resources, so that space is freed up for those users. Both inventions are from the same field of endeavor, namely the intelligent management of computer storage space.

As per claim 2, Abboud-Schubert teaches the method of claim 1, further comprising reserving at least a portion of said disabled set of data media storage slot elements and data transfer elements for present and future use by one of said end users (Abboud: 3; 1-14).

As per claim 3, Abboud-Schubert teaches the method of claim 1, wherein said redefining

step further comprises moving at least one element of said second to said first set in response to an order from one of said end users for additional storage capacity (Abboud: 7; 21-36).

As per claim 4, Abboud-Schubert teaches the method of claim 3, but does not specifically teach charging the customer for additional storage capacity. Official notice is taken that the charging of customers for storage space is well known in the art. It would have been obvious to one of ordinary skill in the art to combine the well-known component of paid storage into the system of Abboud-Schubert, so this service would only be available to those users who really need it, adding to efficiency of the invention.

As per claim 5, Abboud-Schubert teaches the method of claim 1, wherein said data library is controlled by a storage service provider (Schubert: 1; 30-40).

As per claim 6, Abboud-Schubert teaches the method of claim 1, but does not specifically teach that the end users are customers of the storage service provider. It would have been obvious to one of ordinary skill in the art at the time of the invention to specifically include the limitation that the end users are customers of the storage service provider. For the storage provider to have utility, it must have customers, and having the end users of the system as the customers of the storage service provider would give the system utility.

As per claim 8, Abboud-Schubert teaches the method of claim 1, wherein said redefining step comprises: moving at least one element of said second set to said first set in response to an order from said one end user for additional storage capacity and availability of said elements (Abboud: 10; 1-35, 7; 21-36).

As per claim 12, Abboud-Schubert teaches the method of claim 1, but does not specifically teach that the library is located on the premises of the end users. It would have been obvious to

one of ordinary skill in the art to include the existence of the data library on the premises of the users, as in a computer system, where the user is located at the client computer, and the data library is also located at the same computer. The motivation for doing so lies in the fact that most computers have data libraries, and having this system at the premises of the user would allow for greater functionality of that computer.

As per claim 13, Abboud-Schubert teaches a method for providing data storage capacity on demand comprising: reserving a set of data media storage slot elements and data transfer elements in a data library for present and future use by a customer (Abboud: 3; 1-14); disabling a subset of said set of slot elements and data transfer elements (Schubert 8; 1-15, 4; 42-57); partitioning said reserved set into a subset of said set of slot elements and data transfer elements activated as a partition secured for use by said customer, wherein said subsets are exclusive of one another (Abboud: 7; 21-36); and redefining said partition by moving at least one element between said subsets in response to changes in storage capacity needs of said customer (Abboud: 10; 1-35, 7; 21-36)

As per claim 14, Abboud-Schubert teaches the method of claim 13, but does not specifically teach the adjusting of customer charges according to said redefining. Official notice is taken that the adjustment in a pay-per-use paradigm is well known in the art. It would have been obvious to one of ordinary skill in the art at the time of the invention to include this well-known component of usage based charging into the system of Abboud-Schubert, to allow appropriate charges to be levied against users, based on how much usage has taken place.

As per claim 15, Abboud-Schubert teaches the method of claim 13, wherein said library is controlled by a storage service provider (Schubert: 1; 30-40).

Claim 16 is rejected on the same basis as claim 6.

As per claim 18, Abboud-Schubert teaches the method of claim 14, further comprising redefining said partitioned set by moving at least one element between said sets in response to a change in storage capacity needs of said customer and availability of said elements (Abboud: 7; 21-36).

Claims 7, 9, 10, 11, 17, and 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abboud-Schubert in view of Darago (U.S. 6,606,664).

As per claim 7, Abboud-Schubert teaches the method of claim 1, but does not specifically teach the keying of the first elements on a license purchased by one of said users. Darago teaches the licensing of certain groups of services (4; 15-25). It would have been obvious to one of ordinary skill in the art at the time of the invention to include the ability to license a group of services, as taught by Darago in the system of Abboud-Schubert. The motivation for doing so lies in the fact that having a license to a specific service would allow protection of those services to users who have paid for it, which thus ensures that only those users that are serious about these services can use them. All inventions are from the same field of endeavor, namely user-driven network provisioning.

As per claim 9, Abboud-Schubert-Darago teaches the method of claim 8, but does not specifically teach that the said availability is based in part on a license by one of said end users. It would have been obvious to one of ordinary skill in the art to include the distinction that

availability is controlled by the licenses. It is an obvious component of licenses to make available a service to only those users with a license, and to make this service unavailable to those users who do not have a license.

As per claim 10, Abboud-Schubert-Darago teaches the method of claim 9, but does not specifically teach the blocking of a service in light of the user not having a license. It would have been obvious to one of ordinary skill in the art at the time of the invention to block users not having licenses. Licenses are purchased by the user, and only those users are allowed to access certain services. If a user did not purchase a server, he/she should not be allowed access to the system.

As per claim 11, Abboud-Schubert-Darago teaches the method of claim 9, further comprising the increasing of library capacity (Abboud: 1; 56-64). Abboud-Schubert-Darago does not specifically teach the increasing of the license for it. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the ability to purchase further access rights. Most subscription services offer more services for an increased fee, which constitutes the extension of licensing capacity.

As per claim 17, Abboud-Schubert-Darago teaches a method for limiting access to data storage capacity in a data library, said method comprising: disabling a set of slot elements and data transfer elements of said data library, disallowing access to said disabled set (Schubert: 8; 1-15, 4; 42-57); partitioning at least a portion of a set of active slot elements and active data transfer elements of said data library into partitions for use by one customer, wherein said sets are exclusive of one another (Abboud: 7; 21-36, 6; 37-44, 9; 46-64). Abboud-Schubert does not specifically teach the keying of numbers of the elements in the set on a license purchased by the

user. Darago teaches the keying of the numbers of said elements in said partitioned set on a license purchased by said customer (Darago: 4; 15-25). It would have been obvious to one of ordinary skill in the art at the time of the invention to include a licensing method in the storage controller as taught by Darago in the system of Abboud-Schubert. The motivations to combine teachings are the same as the ones set forth in claim 7.

Claims 19, 20, and 21 are rejected on the same bases as claims 9, 10, and 11 respectively.

Claim 22 is rejected on the same basis as claim 12 along with claim 17.

As per claim 23, Abboud-Schubert-Darago teaches the method of claim 17, wherein said customer is a storage service provider (Schubert: 1; 30-40).

(10) Response to Argument

Appellant argues that elements of the claimed invention are not taught by the Abboud, Schubert, and Darago references. Examiner respectfully disagrees.

Claim 1 reads as follows:

A method for providing data storage capacity on demand comprising: disabling a set of slot elements and data transfer elements of a data library disallowing access to said disabled set by end users of said library; partitioning at least a portion of a set of active data media storage slot elements and active data transfer elements of said data library, exclusive of said disabled set, into partitions for use by said end users; and redefining said sets in response to changes in storage capacity rights of said end users.

Appellant asserts that Abboud does not teach “providing data storage capacity on demand.” Examiner respectfully disagrees. Abboud teaches the partitioning of server appliances by partitioning certain appliances into certain partitions on the server (column 2, lines 51-64). If, in partitioning, there is not enough storage capacity to hold certain appliances in a certain

partition, the concept of a floating partition is considered. The floating partition increases capacity if more space is needed (column 3, lines 32-46). This constitutes providing data storage capacity on demand.

Further, Appellant asserts that Abboud does not teach, “partitioning at least a portion of a set of active data media storage slot elements and active data transfer elements of said data library, exclusive of disabled set, into partitions for use by end users.” Examiner respectfully disagrees with this assertion. Abboud teaches that the partitioned items include server appliances, which may constitute disk images, operating systems (column 5, lines 30-48), and other information such as Linux swap (column 6, lines 45-57). This constitutes partitioning at least a portion of a set of active data media storage slot elements and active data transfer elements. For example, a disk image or operating system constitutes data transfer elements, as they are elements needed to transfer data. Also, in flexibly adding storage capacity as taught by Abboud, this constitutes partitioning active data media storage slot elements, as the increase of a partition space constitutes a partitioning increase of storage slot elements, since storage slot elements are needed to allow for more space. Furthermore, the claim requires “partitioning at least a portion of a set,” which constitutes partitioning either a storage slot element portion, a data transfer element portion, or both.

Examiner also respectfully disagrees with the assertion that Abboud does not teach a data library of whose elements are partitioned. The appliance server disclosed by Abboud (column 5, lines 1-19) constitutes a data library, as it is a repository of data.

Next, Appellant asserts that Abboud does not teach the partitioning of elements exclusive of said disabled set. Examiner agrees that Abboud does not per se teach, “disabling a set of slot

elements and data transfer elements of a data library, disallowing access to said disabled set by end users of said library.” As such, Abboud does not teach the subsequently claimed, “exclusive of said disabled set.” However, Abboud does teach partitioning a portion of a set of elements (as set forth above), exclusive of certain disabled elements. In Abboud, the disabled element constitutes the inactive server application, or other elements put away into different partitions to make way for the active server application and its elements (column 2, line 51 – column 3, line 22; where the inactive data is moved to a storage partition, and the active application is moved to the active partition; column 5, line 30 – column 6, line 7). The active appliances are then partitioned based on appliance size, as discussed in column 3, lines 32-46. As such, the partitioning takes place with the server appliance that is active and in use, and not with the one that is now disabled and put away in the storage partition. This constitutes partitioning elements exclusive of a disabled set. Schubert teaches “disabling a set of slot elements and data transfer elements of a data library, disallowing access to said disabled set by end users of said library,” which will further be discussed. A combination of Abboud and Schubert is then relied upon to per se teach the claimed “partitioning at least a portion of a set of active data media storage slot elements and active data transfer elements of said data library, exclusive of said disabled set, into partitions for use by said end users,” where Schubert is specifically relied upon to per se teach “said disabled set”.

Appellant contends that Abboud does not teach, “redefining said sets in response to changes in storage capacity rights of said end users.” Examiner respectfully disagrees. In column 7, lines 21-36, Abboud teaches the implementation of the flexible partitions, changing partition sizes when a certain appliance requires more memory than the current partition can

provide. The user (column 10, lines 19-35) causes the changing of server appliances through user input. Therefore, when an appliance is larger than the partition, the partition is redefined. The user thus has storage capacity rights for the appliances (because of his/her ability to store appliances), which changes as a result of the now larger appliance. As such, this constitutes “redefining said sets in response to changes in storage capacity rights of said end users.”

Further, Schubert teaches the definition and redefinition of storage based on certain server users (column 7, lines 27-45; column 9, lines 13-26).

Next, Appellant asserts that Abboud-Schubert does not teach, “disallowing access to said disabled set by end users of said library.” Examiner respectfully disagrees. Schubert teaches the masking of storage elements so that certain hosts cannot take control of those storage elements (column 4, lines 42-57; column 8, lines 1-15). Appellant argues that Schubert does not teach, “disallowing access to disabled slot elements to (all) end users of a data library, as claimed” (page 8 of the Appeal Brief). However, the claim only discloses disallowing access to the disabled set by end users of said library. This does not encompass “all” end users. Therefore, Schubert teaches disallowing access to the disabled set by end users of the library as claimed, constituted by the fact that some storage elements are masked to certain end users.

Accordingly, each element of claim 1 is taught by Abboud-Schubert.

Regarding claim 2, please see the discussion of claim 13, as claim 13 teaches limitations similar to those of claim 2.

Regarding claims 3 and 4, Appellant asserts that Abboud-Schubert does not specifically teach, “said redefining further comprises moving at least one element of said second set to said first set in response to an order from one of said end users for additional storage capacity.”

Examiner respectfully disagrees. In Abboud, column 7, lines 21-36 teach the repartitioning for an appliance that exceeds the capacity of an existing partition. This necessitates the movement of memory space from one partition to another. This also happens in response to the user commanding that the server appliance be changed. As such, this constitutes moving at least one element of the second said to the first set in response to an order for additional storage capacity.

As per claim 5, Abboud-Schubert, by disclosing a SAN in which data is stored, teaches a “storage service provider” (Schubert: column 1, lines 30-40). Because a SAN provides storage services to an end user, it constitutes a storage service provider. Similarly, this teaching constitutes the disclosure of claim 15.

Claims 6 and 16 recite that “said end users are customers of said storage service provider.” Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of the invention to specifically disclose that end users (in a system that uses storage services) are customers of a storage service provider. This is because the Abboud-Schubert system contemplates the use of a storage service by end users. To call them customers per se requires that they be part of a storage subscription service, for example. This concept is abundantly well known in the art of storage provision, such that users can purchase licenses to use storage elements in a storage system. As requested by Appellant, specific disclosure of this limitation is taught in Iwami (U.S. 2002/0156861), in the Abstract and paragraphs 0002-0003.

As per claim 8, Abboud-Schubert teaches the issuing of a command to execute a reprovisioning process, which is synonymous with the claimed disclosure of “in response to an order.” A command is an order to execute a certain task. As such, claim 8 is constituted by the prior art.

As per claim 12, Abboud teaches that a storage partition is on a local disk (column 2, lines 51-64). As such, this constitutes that the data library is physically located on a premises of one of the said end users (at the server), since the local user is the one performing the partitioning, and the inactive elements are put away in a local partition.

Regarding claims 13 and 14, Appellant asserts that Abboud-Schubert does not teach, “reserving a set of data media storage slot elements and data transfer elements in a data library for present and future use by a customer.” Examiner respectfully disagrees. Abboud teaches the packaging of an inactive server appliance (column 3, lines 1-14) and bringing out an active server appliance. As discussed above, this appliance and other data constitutes storage slot elements and data transfer elements (disk images, operating systems, and other information). Further, Schubert teaches the reserving of storage elements for present and future use by a customer (column 2, lines 39-46; column 6, line 6-65; where certain storage elements are allocated to certain hosts). As such, Schubert’s allocation of storage elements to certain hosts, together with Abboud’s packaging of the newly inactive server appliances, and bringing out the newly active server appliances constitute “reserving a set of data media storage slot elements and data transfer elements in a data library for present and future use by a customer.” To clarify, as an example, Abboud per se teaches, “reserving a set of data transfer elements in a data library for present and future use by a customer.” This is constituted by the partitioning of the server appliances (disk images, operating systems, etc). The inactive appliances are reserved for future use by packaging them. The active appliance is brought to the NOS partition, which constitutes reservation for a present use by a customer. Schubert per se teaches, “reserving a set of data media storage slot elements in a data library for present and future use by a customer.” This is

constituted by the Schubert system allocating certain storage locations to the hosts. The storage functions would take place after allocating the storage to a corresponding host, which constitutes a “present and future use by a customer.” Therefore, together, Abboud and Schubert teach the claim limitation as a whole.

Further, Appellant asserts that Abboud and Schubert do not teach, “disabling a subset of said set of slot elements and data transfer elements.” Examiner again respectfully disagrees. Abboud teaches the storage of a server appliance after it is packaged into an image (column 3, lines 1-14). The storage of the server appliance into a storage partition constitutes the disablement of the subset of the elements, since the user is no longer able to use these elements. Further, the claim teaches disabling a subset of a set of slot and data transfer elements. Therefore, this constitutes the disablement of any subset of the elements, which is taught by Abboud-Schubert.

Regarding Appellant’s assertion that Abboud-Schubert does not teach, “partitioning said reserved set into a subset of said set of slot elements and data transfer elements activated as a partition secured for use by said customer, wherein said subsets are exclusive of one another,” Examiner respectfully disagrees on the same basis as the discussion of the similar limitation in claim 1. Abboud-Schubert teaches the partitioning of an active server appliance into the active partition, such that the partition is expanded if necessary. This partitioning of the active server appliance is performed independent of the stored (disabled) set. Therefore, the limitation is taught as claimed. Similarly, the limitation of “redefining said partition by moving at least one element between said subsets in response to changes in storage capacity needs of said customer,”

is taught by Abboud's increase in partition size at the expense of the storage partition, where the increase in available memory constitutes a redefinition of storage slot elements.

Accordingly, all limitations of claims 13 and 14 are taught by Abboud-Schubert.

Motivation to combine the teachings of Abboud and Schubert exists because both inventions are drawn to the provisioning and partitioning of space among users with differing needs. It would have been obvious to one of ordinary skill in the art at the time of the invention to include Schubert's slot elements in Abboud's teaching of disabling elements, so as to form a disabled set (including slot elements), exclusive of an enabled set, because Abboud already contemplates the disablement of elements (as discussed above; data transfer elements, for example) so that a new server appliance can employ the memory vacated by the packaged and stored server appliance (the stored and active server appliances respectively constitute exclusive sets). The inclusion of Schubert would allow for the disablement of storage slot elements per se, specifically the storage slot elements that are in use by the stored server appliance (and moved to the storage partition in Abboud). The inclusion of this teaching would specifically allow for exclusivity between the active server appliance and its associated elements, and the server appliances stored away and its associated elements, so that the two sets and their associated elements do not infringe upon each other, leading to further efficiency of the system. Both inventions generally are drawn to the efficient usage and allocation of storage and memory, and as such, are drawn to exactly the same problem.

Regarding claim 7, Appellant asserts that Abboud-Schubert-Darago does not suggest, “keying the number of elements in said first set on a license purchased by one of said end users.” Examiner respectfully disagrees. Darago is relied upon to disclose the concept of licensing to users certain intellectual properties or storage sections (column 4, lines 15-56). The license in Darago discloses the limitations and parameters of the license, such that the user is only allowed the service that is covered by the license. As such, in view of Darago in the system of Abboud-Schubert, it would have been obvious to one of ordinary skill in the art at the time of the invention to include “keying the number of elements in said first set on a license purchased by one of said end users.” This is because the system of Darago considers and adheres to the parameters and limitations of the license, and combining this teaching with Abboud-Schubert, the number of elements in an active set in the system may be one such parameter. This is further motivated since Abboud-Schubert does limit certain hosts to take control of only certain storage devices (Schubert: column 4, lines 42-57), and implementing a license would provide an obvious and well known manner with which to enforce this limiting.

Regarding claims 9 and 19, Appellant’s assertion that “availability is based at least in part on a license by one of said end users (or customer),” is not taught by Abboud-Schubert-Darago is respectfully traversed. In column 4, lines 15-56 of Darago, it is taught that users have access to services by the employment of licenses, and if the user does not possess the license to access certain services, they may be purchased, or access is disallowed. This also constitutes the basis of a license – access is allowed to services when a license is present, and access is disallowed to services when a license is not present.

Regarding claims 10 and 20, the concept of “blocking said redefining step in response to said license lacking sufficient rights for said redefining” is well known and obvious to one of ordinary skill in the art. As taught in Darago, the granting of licensing rights to allow users access to certain services would necessitate the disallowance of access to users who do not have said licensing rights. Nevertheless, per Appellant’s request, the per se disclosure of prohibiting access to users without sufficient licensing rights is in paragraph 0051 in U.S. Patent Application 2001/0019605 to Rojas.

Regarding claims 11 and 21, the extension of licensed library capacity is taught in column 4, lines 15-56 of Darago.

Claim 17 discloses a combination of claims 1, 7, and 13. As such, the arguments of these earlier claims also apply to claim 17. Abboud-Schubert-Darago also teaches the partitioning of elements into partitions for use by one customer (Abboud: column 10, lines 4-19; Schubert: column 6, lines 7-65). As such, the limitations of claim 17 are fully taught by Abboud-Schubert-Darago.

Regarding claim 18, Abboud-Schubert-Darago teach the method of claim 17 further comprising redefining the partitioned set by moving at least one element between said sets in response to a change in storage capacity needs of said customer and availability of said elements (Abboud: column 7, lines 21-36). Please also see the discussions of claims 3 and 8, as the limitations of the earlier claims and the present claim are similar.

Regarding claims 22 and 23, please see the discussion of claims 12 and 6, as the limitations of the current claims are similar to those of the earlier claims. Further, Schubert teaches that the customer is a storage service provider (column 6, lines 7-65).

Motivation to include the Darago reference exists, as discussed above in the discussion of claim 7, in view of the fact that the Abboud-Schubert teachings disclose a partitioning and limitation of elements, such that a user may only access a limited amount of resources, and the rest of the elements are partitioned away into a location (or perhaps to a user, as disclosed by Schubert) independent of the current user in question. Because there exists a need to enforce the limitation of scarce elements, the concept of a license would have been envisioned by one of ordinary skill in the art. The motivation for doing so lies in the fact that employing a license to control access to limited resources is well known in the art and provides a convenient manner with which to enforce element allocation to certain users. As such, the combination of Darago's teaching of a license into the system of Abboud-Schubert is proper and would have been obvious to one of ordinary skill in the art. All inventions are from the same field of endeavor, namely the use and access of computing resources.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Tanim Hossain


January 19, 2007

Conferees:

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